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May 13, 2005

Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W., Rm TW-204B
Washington, D.C. 20554

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MAY 19 2005

FCC - MAILROOM

RE: Appeal to the Federal Communications Commission
Positive Solutions Consortium, Billed Entity No. 16020912

To Whom It May Concern:

Enclosed please find an appeal from a decision by the Schools and Libraries Division of the USAC relative to the school district noted above.

Enclosed are an original and five copies of the Appeal and Request for Expedited Relief. Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self addressed-stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,



Linda Schreckinger Sadler

Encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

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MAY 19 2005

FCC - MAILROOM

In the Matter of:)	
Appeal of Decision of the)	
Universal Service Administrator)	CC Docket No. 02-6
)	
by)	
)	
Positive Solutions Consortium)	File No. SLD -
San Antonio, Texas)	
)	
)	
Federal-State Joint Board on)	
Universal Service Changes to the)	
Board of Directors of The National)	<u>APPEAL AND REQUEST</u>
Exchange Carrier Association, Inc.)	<u>FOR EXPEDITED RELIEF</u>

TO: Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

This Appeal made to the Federal Communications Commission ("FCC") seeking review of decisions by the Schools and Libraries Division ("SLD") Universal Service Administrative Company ("USAC") denying funding to Positive Solutions Consortium ("Positive Solutions) for Funding Year 2004-2005.

Appeal Is Taken From the Following Funding Commitment Decision Letter

(1)	Form 471 Application Number:	409745
	Funding Year 2004:	07/01/2004-06/30/2005
	Billed Entity Number:	16020912
	Date of Funding Denial Notice:	March 24, 2005

Funding Request Numbers Appealed

FRNs – 1123301, 1123314, 1123322

SLD's Reason for Funding Denial

The SLD denied funding on the basis that there was a “bidding violation.”

Statement in Support of Appeal

This appeal relates to the Funding Commitment Decision dated March 24, 2005 denying funding for Form 471 Application No. 409745 (FRNs: 1123301, 1123314, 1123322) for “bidding violation” to wit: “Similarities in description on Forms 470, RFP, tech plan and in selective review response among applicants associated with this vendor indicate that vendor was improperly involved in the competitive bidding and vendor selection process.”

It is the position of Positive Solutions that had the SLD assessed and evaluated the individual facts associated with its application, it would not have improperly denied funding. The SLD issued its funding denial without taking into consideration the individual facts and circumstances unique to the funding application filed by this Applicant. In issuing its funding denial the SLD instead categorically grouped this Applicant together with other charter schools using the same vendor and summarily denied funding without investigating Applicant's distinctive facts and circumstances.

1. The SLD erred when it denied funding without analyzing the unique facts and circumstances relevant to Positive Solutions' application.

Positive Solutions properly prepared, and timely filed, an FCC Form 471 for internal connections services. The SLD denied funding for the relevant FRNs on the

grounds that there was a violation of competitive bidding. Based on the Forms 470, RFPs, tech plans and selective review responses of several similar charter schools, the SLD made a finding “that vendor was improperly involved in the competitive bidding and vendor selection process.” The SLD committed reversal error when, on this basis, it denied funding to Positive Solutions. The denial by the SLD was without consideration of the individual facts and circumstances distinct to Positive Solutions’ application which should have been analyzed independently from the other schools associated with the vendor in question.¹ Further, the SLD failed to demonstrate how it reached the conclusion that the vendor was improperly involved because of similarities in the Applicants’ documentation and further failed to apply any standards of law in rendering its decision to deny funding to this school.

Had the SLD carefully reviewed the application and documentation filed by Positive Solutions, it would have easily ascertained that the Positive Solutions Consortium is comprised of several small Texas charter schools. The members of its consortium are just a few of several similarly situated, small, Texas charter schools. The funding obtained through participation in the eRate program is essential to the continued implementation of the technology that benefits the students of these schools. As a consortium of small charter schools, Positive Solutions is without resources to hire consultants to assist with eRate rules, regulations and procedures. As such, it must rely on the internet, help of other schools and avail itself of any other available resources for guidance and advice in preparing its eRate applications.

¹ See *Request For Review by “Consolidated Applicants,”* CC Docket No. 96-45, CC Docket No. 97-21 Order DA-01-1721 (Adopted July 19, 2001).

Prior to preparing and filing its Form 470 application, one of the things done by Positive Solutions was to ask RGC, Inc., the service provider alleged to have been involved in the program bidding violations, for assistance in locating resources upon which it could rely in preparing its application forms and Requests for Proposal ("RFP"). RGC is an SLD-registered service provider who specializes in providing eRate services to small charter schools in Texas. As such, it has knowledge of public resources that can be made available to these schools without RGC having any actual involvement in the application preparation or bidding processes.

Had the SLD acted appropriately and investigated the individual facts and circumstances concerning the similarities in the forms and applications of the individual charter schools associated with this provider, it would have learned that RGC had previously provided services to these schools, and having had a prior working relationship with them, in a neutral capacity, steered them to resources where they could obtain information useful in the preparation of their eRate forms and applications. RGC most likely directed the schools in question to the same public website(s) and public resources. Under USAC Guidelines, Service Providers are permitted to have neutral discussions with applicants in their marketing discussions.² There is nothing in the applications and documentation submitted by Positive Solutions that would contradict this finding. Had the SLD made efficient inquiry of Positive Solutions, it would have been able to determine that throughout the competitive bidding process, RGC remained neutral and uninvolved.

² See *"Chapter 5 - Service Provider Role in Assisting Customers"* at <http://www.sl.universalservice.org/vendor/manual/chapter5.asp>

Further, had the SLD properly investigated each individual application, it would likely have discovered factual discrepancies between the applications of the schools associated with RGC. It is also likely that it would have discovered that each of the schools belongs to The Association of Charter Educators of Texas, ("ACE") an organization that provides support to the Texas charter school community, and the members to one another. The common link of ACE membership could as easily provide explanation for the similarities in the applications and documentation of the schools, as could the extensive availability of resources provided by the Texas Education Agency.³

Having failed to provide any specific basis for its findings, the language employed by the SLD in its Funding Decision Commitment Letter is unclear as to what extent, if any, the SLD evaluated each of the schools' unique facts and circumstances.⁴ It was injudicious on the part of the SLD to make unsupported allegations and deny funding to Positive Solutions without reviewing its application, and those of the other charter schools using RGC as a service provider, on a case-by-case basis. The SLD had an obligation to properly investigate and assess the individual facts and circumstances associated with the application filed by Positive Solutions. Had it met its obligation it would not have made the erroneous finding that there were violations of the competitive bidding process and denied funding on that basis. Positive Solutions complied with program rules and regulations and deserves to have funding request evaluated on its merits. Therefore, the SLD's decision should be overturned and this matter remanded for further determination.

³ See Texas Education Agency website at: <http://www.tea.state.tx.us/technology/index.html>

⁴ See "*Consolidated Applicants*" *supra*, Section II: Discussion, at Paragraph 8

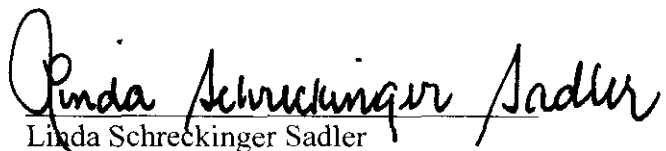
Conclusion

A review of the record supports the finding that the SLD failed to properly investigate and assess the individual facts and circumstances associated with the application and forms filed by Positive Solutions. The SLD committed reversible error when it denied funding on Application No. 408268 on the basis of a "bidding violation" to wit: "Similarities in description on Forms 470, Request For Proposal, and selective review responses among applicants associated with this vendor indicate that vendor was improperly involved in the competitive bidding and vendor selection process." The application of Positive Solutions is entitled to individualized scrutiny and this matter should be remanded to the SLD for further review.

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for all FRN's set forth herein.
3. That funds be set aside to totally fund the Applicant's request.

Respectfully submitted,



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